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UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	. Case No. 02-10892 (MFW)
	. Motion No. (if provided)
	.
STATIONS HOLDING COMPANY, INC.,	. 824 Market Street
	. Wilmington, Delaware 19801
Debtor.	.
	. September 25, 2002
. . . . .	. 1:13 p.m.

TRANSCRIPT OF OMNIBUS HEARING
BEFORE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor:	Kirkland & Ellis By: JAMES SPRAYREGEN, ESQ. GEOFFREY RICHARDS, ESQ. 200 East Randolph Drive Chicago, II 60601
	Pachulski, Stang, Ziehl, Young & Jones By: LAURA DAVIS JONES, ESQ. 919 North Market Street 16th Floor, PO Box 8705 Wilmington, DE 19899
For Gray Communications:	Proskauer Rose, LLP By: MICHAEL FOREMAN, ESQ. 1585 Broadway New York, NY 10036
Audio Operator:	Jennifer M. Patone

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J&J COURT TRANSCRIBERS, INC.
268 Evergreen Avenue
Hamilton, New Jersey 08619
E-Mail: jjcourt@optonline.net

(609) 586-2311 Fax No. (609) 587-3599

APPEARANCES: (Cont'd)

For Gray Communications:	Young, Conaway, Stargett & Taylor, LLP By: JOEL A. WAITE, ESQ. The Brandywine Building 1000 West Street, 17th Floor Wilmington, DE 19899
For Indenture Trustee:	Dechert, Price & Rhoads By: GLENN SIEGEL, ESQ. 30 Rockefeller Plaza New York, NY 10112 The Bayard Firm By: CHRISTOPHER A. WARD, ESQ. 222 Delaware Avenue, Suite 900 P.O. Box 25130 Wilmington, DE 19899
For the U.S. Trustee:	Office of the United States Trustee By: FRANK J. PERCH, III, ESQ. MARGARET HARRISON, ESQ. 844 King Street Suite 2313 Wilmington, DE 19801
For the Lenders:	Klehr, Harrison, Harvey, Branzburg & Ellers, LLP By: STEVEN K. KORTANEK, ESQ. Mellon Bank Center 919 Market Street, Suite 1000 Wilmington, DE 19801 Mayer, Brown, Rowe & Maw By: JOSH LEFKOWITZ, ESQ. 190 South La Salle Street Chicago, IL 60603
For the Creditors Committee:	Richards, Layton & Finger, PA By: JOHN H. KNIGHT, ESQ. One Rodney Square, PO Box 551 Wilmington, DE 19899 Kasowitz, Benson, Torres & Friedman, LLP By: ADAM L. SHIFF, ESQ. 1633 Broadway New York, NY 10019

THE COURT: Good afternoon.

MR. SPRAYREGEN: Good afternoon, Judge Walrath. James Sprayregan of Kirkland & Ellis and Geoff Richards also of Kirkland & Ellis on behalf of the debtors.

MR. RICHARDS: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. SPRAYREGEN: Your Honor, we're here for several matters this afternoon. Obviously chief amongst them is the hearing on the confirmation of the debtor's plan which is listed as item one on the agenda. It's obviously difficult to consider item one without considering the potential impact of item two which is the U.S. Trustee's motion to designate votes of those parties who are bound by lockup agreements.

THE COURT: Right.

MR. SPRAYREGEN: If the Court recalls, when we were here for the disclosure statement hearing there was an objection to the approval of the disclosure statement on the same basis in essence that's articulated in the designation motion that the disclosure statement should not be approved. That objection was resolved by reserving all of the U.S. Trustee's rights to object in essence as now articulated in the designation motion and describing in the disclosure statement the U.S. Trustee's objection on the basis therefore and the fact that the debtor and others disputed that characterization.

We at the time, Your Honor, said we thought it would

be best to proceed to confirmation, get the votes in and see where all the facts are and put them before the Court and at that point in time to consider the issues in that context.

Your Honor, we think that was a highly relevant decision because we still are before you today with respect to this confirmation hearing in an interesting factual posture based upon the votes that came in and the votes that were submitted in the ballot report that was submitted to the Court attached to the declaration of Paula Galbraith, the tabulation agent.

What happened, Your Honor, as a factual matter, is there were three classes voting; the bondholder class, the senior preferred and the junior preferred. The common was deemed to reject because they were receiving nothing under the plan.

As articulated in the ballot report, Your Honor, there were parties not subject to lockup agreements in both the bondholder class and the senior preferred class that voted yes on the plan. Your Honor, what is set forth in the ballot report as a result of that is if you take the issue of the lockup agreements and you assume the lockups are valid, those three voting classes voted to accept the plan. If you assume that the U.S. Trustee's motion is granted, the designation motion, and the locked-up parties' votes on the plan of reorganization are designated and thus not counted for purposes

of confirmation, the factual situation we would have is the bondholder class has accepted, the senior preferred class has accepted and the junior preferred class has rejected. There was one rejecting vote at the junior preferred class. We would then obviously be in a cram-down mode with respect to the junior preferred class.

I go through all of that at the threshold of this hearing, Your Honor, because our suggestion, subject to how the Court desires to proceed and obviously subject to Mr. Perch's position on behalf of the U.S. Trustee's Office, is that due to this factual situation the issue of the validity of the lockups with respect to this particular case is not ripe and doesn't need to be determined in order to address confirmation of the plan because --

THE COURT: So you're not asking me to consider those who voted pursuant to the lockup?

MR. SPRAYREGEN: What we're saying is you don't need to consider those for purposes of confirmation. That is assuming arguendo you were to grant the designation motion, then if you just count the votes in that guise, we have sufficient votes to confirm the plan. We don't think that you need to determine that motion or need to determine the lockup issue --

THE COURT: Well, I need to determine who voted to determine whether or not the plan should be confirmed. So I

don't think it's not ripe or moot --

MR. SPRAYREGEN: With --

THE COURT: -- and I think you have to decide whether you want to proceed with the second motion.

MR. SPRAYREGEN: Your Honor, what we're raising, and we'll proceed any way the Court desires, is if we proceed on the designation motion and the Court grants the designation motion, we would then ask to continue to proceed with the confirmation hearing --

THE COURT: Well, I understand.

MR. SPRAYREGEN: -- and all I'm suggesting is in terms of efficiency and resources and in terms of not reaching issues that actually candidly are important issues in many other cases that don't need to be determined in this particular case to address confirmation, that there is a method by which to not address the issue and address the confirmation. We're happy to proceed however the Court desires, but we're also not asking to burden the Court with decisions that aren't actually relevant to the issue of whether the plan ought to be confirmed.

So that was where we were coming from on that. But as we said at the disclosure statement hearing and as I went through in part at that point in time --

THE COURT: Well, let me cut to the chase. I think I have to decide the motion and I'm prepared to decide the

motion. So let me hear from the United States Trustee.

MR. PERCH: Thank you, Your Honor. May it please the Court, Frank Perch for the United States Trustee.

Your Honor, before I begin my argument on this matter, I would like to introduce to the Court the person sitting to my left at counsel table who is Margaret Harrison, who is a new staff attorney who has joined our office as of this week.

THE COURT: All right, thank you. Welcome.

MR. PERCH: Thank you very much, Your Honor.

Your Honor, this is the U.S. Trustee's motion to designate the parties who executed certain post-petition lockup agreements and therefore to direct that those votes not be counted with respect to confirmation of the plan of reorganization. And, of course, as Mr. Sprayregen indicated, the issue would then have to be determined whether the plan could be confirmed notwithstanding not counting those parties' votes.

Your Honor, in this case I think it is now factually beyond dispute what occurred. I don't think the facts are in dispute here. I think that there is no dispute. That what occurred is that the debtor in part at the behest of the proposed purchaser, Gray Communications, obtained the signature of very large percentages of the bondholder and senior preferred shareholder and junior preferred shareholder

constituencies, classes four, five and six, all three of the voting classes under the plan. Obtained signatures of a large percentage of these parties after the filing of the petition but prior to the dissemination of any disclosure statement to certain lockup agreements. And the plan supplement that was filed on approximately August 6th by the debtors contains what I believe are all of the lockup agreements. There are four agreements, if I recall correctly, and some of them were signed by multiple parties. In relevant part they are all the same. And the key features of the lockup agreements for purposes of this issue, Your Honor, were outlined in the United States Trustee's motion and the most important feature and the one I'm going to spend the most time on is the injunctive relief and specific performance features, and that is the provision of the lockup agreement that states that the various covenants that the signatories have entered into with respect to this agreement are enforceable by specific performance. And, in fact, the signatories are stipulating to that. They're stipulating that money damages would not be a sufficient remedy for any breach of this agreement and each non-breaching party shall be entitled to the sole and exclusive remedy of specific performance and injunctive or other equitable relief.

So one of the things that the parties have stipulated that the debtor may obtain injunctive relief on, they may obtain injunctive relief on the covenant of each signatory that

it shall timely vote its claim to accept the plan and shall not elect on its ballot to preserve any claims that may be affected by the releases provided for under the plan. Each of the signatories has agreed -- first of all, they've agreed to vote. They're not permitted to abstain. They've agreed -- they have committed to vote in favor of the plan. They have committed not to preserve any rights against third parties where there may be a ballot election as there was here whether or not to enter into certain releases. And all of those provisions may be specifically enforced.

The language of the agreement would suggest that the signatories have waived any objection to the specific enforcement, the injunctive enforcement of those provisions.

As a result, Your Honor, we believe that the lockup agreement is a vote. The opponents, the debtor and the Official Committee of Unsecured Creditors, the opponents have cited to the governing 3rd Circuit case on solicitation which is Century Glove and they've also cited to the case that's referred to in Century Glove which is the older case of Snyder. And the language in the Snyder case I think that's used that the debtor clearly relies on is the statement that solicitation should be viewed narrowly in order to foster negotiation among creditors and should be deemed to refer only to requests for an official vote.

And as a result, Your Honor, the question presented

by this motion and the question that's before Your Honor is whether the disclaimer in these documents that says this is not an official vote is enough to make it not an official vote when you look at what the real effect of the agreement is. And the Court certainly has power to do that and I just want to spend a moment to make that clear because the debtor in its opposition papers spends a lot of time on saying this agreement was heavily negotiated and it was carefully written to be contingent on compliance with the Bankruptcy Code and contingent on compliance with 1125(b) and so on.

I've been in this courtroom many times when the issue has been placed before the Court in various contexts. Their document is not necessarily what it says it is, that saying it does not make it so. You may say the document is a lease, nonetheless the Court may find that it's a financing agreement. So they may say this document is not a vote, nonetheless the Court may find that it's a vote.

As a result of having obtained the stipulation to the injunctive specific performance agreement, what the debtor has done is the debtor has rendered the rest of the process a sham and a mere formality. Because what the debtor is saying is that I present to you a ballot. I present to you a disclosure statement. And that ballot says -- it has two boxes, it says accept, it says reject. What happens if one of these creditors who signs this agreement took that ballot and checked reject

and sent that ballot back to the voting agent? The debtor's position is that they have the power under the agreement to come here, to come to the Court and say, Your Honor, take that ballot, rip it up, shred it, throw it in the trash. That is not their vote. What is their vote? Their vote is an acceptance. Why is their vote an acceptance? Because of this thing that they signed back here before the disclosure statement was even drafted and so therefore the debtor's position is that the vote has already occurred and that, in fact, if the creditor takes any action that is inconsistent with the vote, the acceptance having already occurred back then, the debtor can come to court and render that subsequent act of the creditor a nullity. So that, in fact, when the optical process of voting is occurring, there is not voting. There is no choice. This isn't a real vote. This isn't a real choice. Voting involves choice. At least maybe outside of the Soviet Union, which is gone.

THE COURT: You'll need to find another analogy.

(Laughter)

MR. PERCH: I suppose so.

The purpose of a disclosure statement -- let me state it this way, Your Honor. The purpose of a disclosure statement is to provide creditors with information to utilize in making a choice. But what's occurred here is that a disclosure statement has been disseminated but the choice has already been

foreclosed. And it's our position, Your Honor, that the injunctive provision of the agreement makes it a vote.

There actually is, Your Honor, a fairly small body of case law about this it turns out, and I think you may have noticed that both the U.S. Trustee's motion and the debtor's and the Committee's responses really argue about the impact of the same three or four cases. I think the case that the respondents rely on most heavily is the case out of the District of Minnesota, the Bankruptcy Court of the District of Minnesota called Kellogg Square in which the debtor entered into a rather complicated settlement with the Utility that involved the rejection of the Utility's contract thereby creating an unsecured claim that the Utility would vote, a rather large unsecured claim, that the Utility would be entitled to vote and an element of the settlement with the Utility was therefore that the Utility would agree to vote that unsecured claim in favor of the plan. And the debtor and the Committee -- and I think also argue, that Kellogg Square should be read by Your Honor as standing for the proposition that basically the Court there has endorsed the concept of a lockup agreement and has endorsed the concept that the vote can be fixed prior to the dissemination of the disclosure statement.

If the Kellogg Square case bears some careful examination, there's nothing in the Kellogg Square opinion that in any way indicates that the agreement entered into with

respect to the Utility's claim in that case contained an injunctive relief specific performance stipulation on behalf of that creditor.

The terms of the agreement are described in several paragraphs on Page 338 of the Court's opinion and with respect to the plan all the agreement as recited in the opinion says that District Energy, which was the name of the creditor, will cast a ballot in favor of debtor's plan.

The Court then states after reciting the five elements of the agreement that all the parties to that, the relevant parties to that case agreed that those provisions accurately set forth the understanding and agreement that the debtor negotiated with District Energy, that was apparently subsequently reduced to writing.

So in the absence of anything further, I think we have to take the Court's description as being a description of what the agreement is and it doesn't contain this injunctive specifically enforced provision. In fact, it seems like the Court really didn't view the agreement as containing a provision under which the debtor could force a vote if the creditor didn't take some action.

Turning forward to Pages 339 and 340 of the opinion, the Court says that District Energy's agreement to accept the debtor's plan made post-petition but before approval of a disclosure statement remained executory until District Energy

actually filed its accepting ballot with the clerk of this court.

In other words, for whatever reason, clearly what the Court in the Kellogg case understood was happening was a circumstance where the creditor had entered into a contractual commitment but that further action by the creditor was required in order to make the creditor's vote count. That's just simply not true here and I don't think the Court can make that finding here. The Court has to look at this agreement and see that here the debtor has the ability to make the vote count in the absence of action by the creditor or even notwithstanding contrary action by the creditor.

The responses, I should say, also refer to the Texaco case and the Texaco case is a situation that I think is factually distinguishable on additional grounds, including grounds that were specifically set forth by the Court in its opinion. The Court noted in its opinion, notwithstanding the fact that the respondent's attempt to downplay this I think the Court found it to be significant in its opinion that the Court felt the agreement there could not be determined to be a solicitation because it did not, in fact, obligate the party to vote. They could abstain. Once again, a situation where further action by the creditor was found by the Court to be required in order to have a vote occur, which is simply not true here.

Also, in the Texaco case, ultimately what happened was the creditor and the debtor were joint proponents of the plan and I think the Court just has to factually distinguish that situation from this one because the concept of a co-proponent of a plan objecting to their own plan or voting to reject their own plan is a little bit Alice in Wonderland. I suppose one could ultimately say I changed my mind and I don't like the plan that I've proposed, but this is not a circumstance where we're talking about whether a co-proponent would, absent some other actions, support its own plan.

So those two cases really which are the principal cases that are relied on here are both legally and factually distinguishable. They involve complicated settlements. Really both of them are factually distinguishable because they involve complicated settlements, including settlements of claims that were unliquidated as to liability. But the most important feature is that in both of those cases the Court found that further action by the creditor was required in order for there to be a vote. Here what we have is a situation where the debtor drafted an agreement very carefully, using its own words, that was intended to foreclose the possibility that any further action by the creditor was either necessary or would be sufficient in order to provide for a vote to be counted that would be different from the vote that the debtor sought to lock in at the time that the agreement was signed.

I really think, Your Honor, the only other argument, if one can call it that, that the debtor places before Your Honor in support of the agreements is they are something that customarily happens and there are some exhibits attached to the debtor's response to the motion that are somewhat similiar looking agreements from the Goss Graphic case, the United Artists case and I believe one other case, Global Ocean.

Your Honor, if one looks at all those agreements, you can see those were all pre-petitioned lockup agreements. They're agreements that specifically recite. They are things that were signed pre-petition with respect to a case to be commenced in the future.

The issue of a pre-petition lockup agreement is a different issue that's not before the Court today. A pre-petition -- a pre-petition vote, if there is such a thing, implements Section 1126(b), not 1125(b), Section 1126(b) dealing with how you present a pre-packaged plan or present pre-packaged votes at least from certain creditors or certain classes.

THE COURT: And isn't it fundamentally different? 1125 does not apply to solicitation of votes before a bankruptcy case is filed.

MR. PERCH: Absolutely. Absolutely. But --

THE COURT: It can't.

MR. PERCH: -- but the issue -- the issue may exist

in such a case. The issue could theoretically come up in such a case that if any attempt were made to enforce the lockup agreements without seeking approval of the lockup, voting process under 1126(b), but we don't need to talk about that today because that's not this case. This is an 1125 case. This is a post-petition act of the debtor and of the creditors in question.

Your Honor, certainly regardless of whether Your Honor ultimately determines that the plan could be confirmed if -- even if the votes are designated. Certainly it's important for a number of purposes on the record of this confirmation hearing to be clear as to what the votes are and I think Mr. Sprayregen's argument to the Court seem to want to straddle the fence of saying that -- asking the Court to confirm the plan but not really wanting to take the position as to whether the votes are counted or not. There are a number of reasons why we need to know for the future whether the votes are counted or not. I'll just pick one which is that in the event that there were to be any further need to seek a modification of the plan under Section 1127, Section 1127(d) provides that votes that were counted for the previous plan are votes that count for the modification unless those creditors change them. So there's just one example, we only need one, of why we need to know exactly which votes are counted for this plan. Why this record has to be very clear and for that reason, Your Honor, I think

the motion does need to be considered and for the reasons that I have set forth, I think that the Court needs to find that what occurred here was determination of these creditors' official votes. No way around it, determination of these creditors' official votes. I think you might hear from the debtor or from the Committee that well, it was contingent upon filing a plan that was consistent with the term sheet. Once again, Your Honor doesn't need to engage in hypothetical inquiries. Your Honor doesn't need to decide whether the creditor may have been bound under the agreement or should have been bound under the agreement if some different plan had been filed. We only need to decide whether the votes count with respect to the plan that is before Your Honor today.

It is somewhat interesting in that there is one objection filed that suggests that the plan at least in one measure does not comply with the term sheet. That being the objection of the Bank of New York. I'm not rising in support of the Bank of New York's position because the Bank of New York has a position about sort of automatic payment of indenture trustee fees that disagrees with objections that we've made in other cases. But without belaboring the Court any further, Your Honor, what may happen -- what may happen if some other plan had been filed, if the debtor had done something else, is totally irrelevant. Let's just assume for purposes of this argument that outside of whatever Your Honor may ultimately

decide with respect to Bony's objection, that the plan is at least within the number of the term sheet. It's hard to say in compliance because the whole point is the term sheet is the three-page outline, does not comply with any of the disclosure requirements as was explained in our motion. But let's assume it does, the point is that with respect to that plan, to the plan -- with respect to the plan that the parties are seeking confirmation of today, certainly it's my understanding that the debtor's position is that that plan conforms to the term sheet. It's my understanding that the debtor's position is that as a result the creditors are bound to vote and therefore I think the Court has to just work with that and not get distracted by any hypothetical issues about what other plan might exist. The point is that the debtor believes that it has precluded -- the debtor believes that these agreements can be used to preclude anything other than acceptance by these creditors and for the reasons set forth in our motion and in this argument, Your Honor, we believe that that violates 1125 as a result of which these parties need to be designated and their votes not counted. And that I think really sets forth the U.S. Trustee's position, unless the Court has any questions.

THE COURT: No, thank you.

MR. PERCH: Thank you.

MR. SPRAYREGEN: Your Honor, we, on behalf of the debtor, actually endorse the U.S. Trustee's suggestion that we

focus on the precise facts of this case in this situation. And it seems to us that what that means it's focusing on a piece of paper that was signed up between and among the debtors and various creditors who became locked-up parties.

The U.S. Trustee focuses extensively on this injunctive relief point. Your Honor, we would submit that that is a red herring. And, in fact, the point is used as a method by which to distinguish the situation of the creditor in the Kellogg case that I'll go through in a minute. But the injunctive relief section is just a -- is a remedy, it has nothing to do with whether there is a contractual obligation at the front end. And in the Kellogg case whether there was or wasn't an agreed-upon provision for specific performance, there was a contractual obligation subject to whatever it was subject to in that case. And had that obligation been breached by the creditor, the debtor would have had whatever rights it would have had and in this case was the rights if the lockup was enforceable would be injunctive relief in that case because it's not specified, at least in the written opinion, would have been a creature of state contract law. May have been specific performance. May have been injunctive relief. May have been monetary damages. Who knows what it could have been?

But I start with that because I'm attempting to illustrate that that's not the issue. The issue --

THE COURT: Well, let's talk about the issue which is

1125 --

MR. SPRAYREGEN: Yes.

THE COURT: -- (b).

MR. SPRAYREGEN: I was just turning to that.

Your Honor, 1125(b) --

THE COURT: By asking the creditors to sign the lockup, is there any definition of solicit that that does not fall within?

MR. SPRAYREGEN: Yes, Your Honor.

THE COURT: What?

MR. SPRAYREGEN: Your Honor, in the lockup agreements themselves, we have enshrined several provisions that go to exactly that point. This is not something that the debtor and the creditors didn't think about at the time these lockup agreements were entered into. The debtor, the creditors the Creditors Committee, had every desire and continues to have every desire and belief actually, to comply with all of the provisions of the Bankruptcy Code, including the solicitation provisions. So what does the lockup agreement say? It says the lockup agreement isn't going to be enforceable if it provides for any different treatment, and if in the plan of reorganization there's any different treatment than is set forth in the term sheet. That's one point.

The second point. The enforceability of the lockups, that is the obligation under the lockup agreements to do

anything.

THE COURT: Isn't the lockup -- the request to sign the lockup is a request for the commitment to vote for the plan? You will vote in favor of the plan.

MR. SPRAYREGEN: Only if certain things happen.

THE COURT: Well, if certain things -- let's ignore that because the question is whether this is a solicitation of a vote on the plan.

MR. SPRAYREGEN: Exactly, Your Honor. And our point is that can't be ignored when you say let's ignore that. There's an incredibly important and relevant and applicable condition subsequent to any obligation. What is that? The enforceability of a lockup is subject to the provisions of Section 1125 and 1126 of the Bankruptcy Code. It is also specifically stated that these are not a solicitation under the Code.

THE COURT: Well, either it is or isn't, you know, is for me to determine, not for you to say whether it is or it isn't.

MR. SPRAYREGEN: Your Honor, we understand that, but it is important, Your Honor, and the previous sentence is critically important, that's the operative language of the lockup agreement. And what is says is there's zero obligation. No obligation whatsoever to vote on this plan or to vote yes on this plan unless and until this Court approves a disclosure

statement.

THE COURT: Yes.

MR. SPRAYREGEN: And once a disclosure statement is approved, Your Honor, from that moment in time on under 1125(b), we're permitted to solicit the vote.

So you have in essence --

THE COURT: You solicited the vote before. You got their commitment to vote for a plan, not inconsistent with the plan summary, a three-page document, conditioned only on a disclosure statement being approved. You didn't say hey, if the disclosure statement reveals information that causes you to want to change your vote, you can change your vote. It doesn't say that.

MR. SPRAYREGEN: Your Honor, that's actually a critical and important point.

THE COURT: Yes.

MR. SPRAYREGEN: The point is if there was information in the disclosure statement that the creditors were uncomfortable with, there was no prohibition on objecting to the disclosure statement. And unless and until the disclosure statement is approved, there's not obligation to vote.

THE COURT: Objecting to a fact is different from objecting to a plan that requires my vote or nothing in here says that if the disclosure statement reveals that I'm not aware of because you only gave me a three-page summary, I can

change my vote.

MR. SPRAYREGEN: Yes --

THE COURT: It allows you to object to the disclosure statement.

MR. SPRAYREGEN: With respect, Your Honor, I --

THE COURT: And objections to the disclosure statement are non-substantive.

MR. SPRAYREGEN: With respect, Your Honor, I very much disagree.

THE COURT: Where?

MR. SPRAYREGEN: This is a --

THE COURT: Where does it say that?

MR. SPRAYREGEN: Let me get to that. This is actually -- this factual situation is highly relevant. The reason this is a three-page term sheet is because this is a very simple point. We are paying the creditors, the bondholders, in full.

THE COURT: But you're talking about preferred shareholders and you're not paying them in full.

MR. SPRAYREGEN: We're not paying them in full, that's correct. But it says right in the term sheet what they get under the plan.

THE COURT: Yes.

MR. SPRAYREGEN: And --

THE COURT: And let's posit the disclosure statement

revealed that the company is worth ten times what Gray is paying for the debtor.

MR. SPRAYREGEN: Yes.

THE COURT: Do you think the preferred shareholders could change their votes?

MR. SPRAYREGEN: Do I think -- I don't think the disclosure statement could get approved. That would be inconsistent --

THE COURT: Wait a minute. The disclosure statement, the only possible objection to a disclosure statement is it lacks adequate information or the information is factually inaccurate. You can't object to it on substantive grounds that it differs from what I was told previously.

MR. SPRAYREGEN: No, that's not my point. My point is then they wouldn't be getting that which they bargained for under the term sheet --

THE COURT: Oh, yes, would. I could see that your plan would say, hey, you know, we bargained to give them $60 million. That's all they're getting but gosh, the true valuation of the company reveals it's worth 300 million.

MR. SPRAYREGEN: Okay. If that's --

THE COURT: They could object to the disclosure statement. I'd overrule that objection.

MR. SPRAYREGEN: Hold on, Your Honor. Because we're now into the equity level.

THE COURT: Yes.

MR. SPRAYREGEN: We're paying the banks in full under this plan.

THE COURT: Yes.

MR. SPRAYREGEN: We're paying the bonds in full. Under your factual scenario, the senior preferred creditors just would have received more. That's exactly the point. That's why it's so simple. If --

THE COURT: No. The senior preferred shareholders would not if they're getting what Gray is paying for the debtor, not what the valuation of the debtor is.

MR. SPRAYREGEN: Your Honor, again, we would submit that is the fair market valuation.

THE COURT: Well, I know you're submitting that. I'm positing an objection to a disclosure statement which reveals facts different from what they were told at the time they agreed to vote in favor of the plan. It would not relieve them of their obligation to vote for this plan.

MR. SPRAYREGEN: Your Honor, the terms of the plan provide that the senior preferred receive everything that doesn't go to the people above them until they're paid in full under their preferred stock certificate.

THE COURT: No. It says they get the consideration paid by Gray. It doesn't say that they get the fair market value of the company.

MR. SPRAYREGEN: I have to admit, Your Honor, I'm not quite following that in the sense of unless we posit that the market did not operate here what -- and again, we're prepared to at the right time present our evidence and confirmation. But the evidence will be that through a process this was and produced the fair market value. So --

THE COURT: I'm talking about the terms of the lockup and at the time that they signed the lockup.

MR. SPRAYREGEN: Um-um-hum.

THE COURT: And what rights they had. The fact that it was conditioned on the debtor filing a disclosure statement is irrelevant because it does not say that they have the right to change their vote if the disclosure statement I approve causes them to want to change their vote.

MR. SPRAYREGEN: But, Your Honor, obviously --

THE COURT: Isn't that the point of the disclosure statement?

MR. SPRAYREGEN: That's exactly the point of the disclosure statement, Your Honor, and what we're submitting and it may be that we disagree, obviously your view is more important than mine, but what we're saying is they were not obligated unless and until their rights -- excuse me, their obligations in essence spun into existence after the time that this Court approved the disclosure statement.

THE COURT: An approval of a disclosure statement is

nothing more than approving a document that contains adequate information. Your lockup agreement did not say that after reviewing that they had the right to change their mind. So how does it comply with 1125 which says nobody has to vote on a plan until they get adequate information.

MR. SPRAYREGEN: We agree with that. Your Honor, what you're positing is that they were obligated to vote prior to the time that the Court approved the disclosure statement.

THE COURT: No. Prior to them getting, considering and having the right then to decide how to vote after they get the adequate disclosure.

MR. SPRAYREGEN: And, Your Honor, what we are saying, and again, it appears the Court disagrees, but what we're saying is their obligation to vote did not exist, did not come into being.

THE COURT: Until I approved the disclosure statement, but not that contained information substantially similar to the information they had already gotten.

MR. SPRAYREGEN: But, Your Honor, this is where --

THE COURT: And isn't that -- even a pre-bankruptcy lockup agreement has that protection.

MR. SHIFF: Adam Shiff. Your Honor, if I may interrupt. I think there's a point though that there's a step in here that's still missing. The point is the Court did approve a disclosure statement. Ballots then went out to

everyone who's entitled to vote and each one of those people had an independent decision to make at that point. They could vote or not vote. They may have believed this agreement was binding on them. They may have agreed it was not binding on them. But they all made a decision to vote. If we had a situation here, which we don't have, where someone got that document and said, you know what, I don't like this plan anymore. I want to vote against. And then someone came in and said oh, no, you can't, you're bound -- you're bound to vote on this and then you'd have this issue to decide --

THE COURT: No, I have the issue to decide whether these votes should be counted, i.e., whether I think they're bound by it whether or not they think they are or not. Whether they, because of the language in here saying they only have --

MR. SHIFF: But the only real relevant facts here are people all received a disclosure statement. That's a fact. There was a disclosure statement approved by you. Those people then all voted in favor. So the only thing you really have before you is the fact that every single creditor and all shareholders, with the exception of one, received documents and not only that, those documents specifically said there are people out there who believe these things are unenforceable. The U.S. Trustee's statements were included in there. People had a road map where they could turn and said we don't have to vote --

THE COURT: And it also said 98 percent have already voted in favor of a plan under lockup agreements.

MR. SHIFF: It's really -- but everyone was free to do that. Your Honor, someone referred to Global Ocean before, it's a similar situation. We had lockups with 98 percent of the people.

THE COURT: And they were all signed pre-petition. That is a completely --

MR. SHIFF: They were but --

THE COURT: -- different situation.

MR. SHIFF: -- that didn't stop -- that didn't stop this person who thought it was inappropriate from coming in here and complaining about it and getting that plan thrown out.

THE COURT: Because 1126(b) has a different standard. You're not even complying with that standard.

MR. SHIFF: I'm not discussing the ultimate standard as to what they should have given us or not given us when we signed the agreement. I'm focusing on the action that happened here. The action that happened was people file -- submitted ballots in accordance with the balloting procedure following receipt of the disclosure statement. People had the -- people had independent counsel they could have consulted whether it's binding on me or not. Now, it may have been people were saying oh, we received 100 cents on the dollar, we're so happy we're not going to think about it. But the fact

is all those people received ballots following the disclosure statement. They openly submitted the ballot and there's no evidence, there's no evidence that's been offered, that, you know, votes certainly weren't coerced in any way. Simply, like in any case, people got ballots, they voted yes or no. And if someone came in here and said -- voted no and they tried to challenge it, we'd have an interesting issue.

At the disclosure statement hearing I posited that these agreements may not be enforceable -- who signed them because there are certain, you know, subjects and caveats there. But the point is I don't think that's germane to what we're here before. That would be interesting if we were on issue with enforcing this lockup agreement. If one of the parties --

THE COURT: You are enforcing the lockup agreement. You want the votes to count and they were votes --

MR. SHIFF: No, I am not --

THE COURT: -- obtained pursuant to a lockup agreement submitted and signed before any disclosure statement approved by this Court was given to them.

MR. SHIFF: Respectfully, Your Honor, I don't think anyone is seeking to enforce the lockup agreement. I think the only thing people are seeking to enforce is to have the votes that were timely submitted count. That's what --

THE COURT: I can't ignore that those parties signed